

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
 Washington, DC 20001-2866
 Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

1. CASE NO. 23-1038 2. DATE DOCKETED: 2/16/2023
3. CASE NAME (lead parties only) GAVIN POWER, LLC v. EPA
4. TYPE OF CASE: ☒ Review ☐ Appeal ☐ Enforcement ☐ Complaint ☐ Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? ☐ Yes ☒ No
 If YES, cite statute _____
6. CASE INFORMATION:
 - a. Identify agency whose order is to be reviewed: U.S. Environmental Protection Agency
 - b. Give agency docket or order number(s): See addendum.
 - c. Give date(s) of order(s): 11/18/2022; 11/28/2022
 - d. Has a request for rehearing or reconsideration been filed at the agency? ☐ Yes ☒ No
 If so, when was it filled? _____ By whom? _____
 Has the agency acted? ☐ Yes ☐ No If so, when? _____
 - e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):
See addendum.
 - f. Are any other cases involving the same underlying agency order pending in this Court or any other?
☒ Yes ☐ No If YES, identify case name(s), docket number(s), and court(s)
See addendum.
 - g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?
☒ Yes ☐ No If YES, give case name(s) and number(s) of these cases and identify court/agency:
See addendum.
 - h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? ☐ Yes ☒ No If YES, provide program name and participation dates.

Signature /s/ Stacey L. VanBelleghem Date 09-14-2023

Name of Counsel for Appellant/Petitioner Stacey L. VanBelleghem

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ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

ADDENDUM TO AGENCY DOCKETING STATEMENT

Gavin Power, LLC v . U.S. Environmental Protection Agency, Case No. 23-1038
(consolidated with Case Nos. 23-1035, 23-1036, 23-1037)

Question 6(b). Give agency docket or order number(s):

The agency docket or order numbers are listed below:

- EPA-HQ-OLEM-2021-0590-0100 (Final Decision: Denial of Alternative Closure Deadline for General James M. Gavin Plant, Cheshire, Ohio) (Nov. 18, 2022) (“Final Gavin Denial”); and
- Notice of Final Decision, Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; A Holistic Approach to Closure Part A: Final Decision on Request For Extension of Closure Date Submitted by Gavin Power, LLC, 87 Fed. Reg. 72989 (Nov. 28, 2022).

Question 6(e). Identify the basis of the appellant’s/petitioner’s claim of standing. See D.C. Cir. Rule 15(c)(2):

Petitioner seeks review of a final action by EPA denying Petitioner’s request for an extension pursuant to 40 C.F.R. § 257.103(f)(1) to allow a coal combustion residuals surface impoundment at a facility owned by Petitioner to continue to receive waste streams after a certain date. EPA’s Final Gavin Denial made findings with respect to other coal combustion residual compliance obligations at Petitioner’s facility and purported to impose new Resource Conservation and Recovery Act regulations and requirements on Petitioner’s facility. Petitioner has standing because Petitioner’s facility is the subject of the challenged agency action and EPA

seeks to impose unlawful new costly and burdensome regulations and requirements on the facility.

Question 6(f). Are any other cases involving the same underlying agency order pending in this Court or any other?

The following cases involve the same underlying agency order and are pending in this Court:

- *Electric Energy, Inc., et al. v. EPA, et al.*, Case No. 23-1035 (D.C. Circuit);
- *Utility Solid Waste Activities Group v. EPA, et al.*, Case No. 23-1036 (D.C. Circuit); and
- *Appalachian Power Company, et al. v. EPA, et al.*, Case No. 23-1037 (D.C. Circuit).

The above cases have been consolidated with this case.

Question 6(g). Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve *substantially the same issues* as the instant case presents?

The Final Gavin Denial reaffirms and imposes some of the same regulations and requirements promulgated by EPA on January 11, 2022, which are at issue in *Elec. Energy, Inc. v. EPA*, No. 22-1056 (D.C. Cir. filed Apr. 8, 2022) (consolidated with Case No. 22-1058).

CERTIFICATE OF SERVICE

I hereby certify that, on September 14, 2023, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the D.C. Circuit using the CM/ECF system. All parties are registered CM/ECF users, and service will be accomplished by the CM/ECF system.

Dated: September 14, 2023.

Respectfully submitted,

/s/ Stacey L. VanBelleghem

Stacey L. VanBelleghem